

Amendment No. 31 to SB3895

**Bryson
Signature of Sponsor**

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 3895*

House Bill No. 4011

by adding the following new sections immediately preceding the last section and by renumbering the subsequent section accordingly:

SECTION _____. Tennessee Code Annotated, Title 29, Chapter 26, Part 1, is amended by inserting the following as a new, appropriately designated section thereto:

29-26-____. As used in this part, unless the context otherwise requires:

(a) "Health care provider" means a health care practitioner licensed, certified, or registered under any chapter of titles 63 or 68, a nongovernmental health care facility licensed under title 68, chapter 11, a nongovernmental mental health facility licensed under title 33, chapter 2, part 4, the employee of a health care provider involved in the provision of health care or a professional corporation or professional limited liability company as established pursuant to title 48.

(b) "Health care liability action" means any civil action against a health care provider or providers in which the claimant alleges injury related to the provision of or failure to provide health care services, regardless of the theory of liability on which the action is based. Any such civil action is subject to the provisions of this part regardless of any other claims, causes of action, or theories of liability alleged in the complaint.

SECTION _____. The code commission is requested to delete the terms "malpractice," "medical malpractice," "malpractice action," and "medical malpractice action" wherever they appear in Tennessee Code Annotated, title 29, chapter 26, part 1, and to substitute instead the term "health care liability action."

SECTION _____. Tennessee Code Annotated, Section 29-26-119, is amended by deleting the section in its entirety and by substituting instead the following:

(a) In any health care liability action in which liability is admitted or established, the damages awarded may include, in addition to other elements of damages authorized by law, actual economic losses incurred by the claimant by reason of the injury. Actual economic losses include, but are not limited to, the costs of reasonable and necessary medical care, rehabilitation services and custodial care, loss of services, and loss of earned income. Evidence of such damages is admissible and such damages recoverable only to the extent that such losses are not paid, payable, replaced, or indemnified by insurance provided by a governmental or private employer, by social security benefits, service benefit programs, unemployment benefits, or any other source except the assets of the claimant or of the members of the claimant's immediate family and insurance to the extent that it was purchased, in whole or in part, privately and individually. Such recoverable damages shall not include expenses or charges to the extent that they have been discounted or forgiven for any reason, including, without limitation, discounts arising from a relationship with a health insurer or other payor.

(b) In any health care liability action in which liability is admitted or established, the damages awarded may include, in addition to other elements of damages authorized by law, noneconomic losses; provided, however, the damages awarded for such noneconomic losses shall not exceed a total of two hundred fifty thousand dollars (\$250,000), or five hundred thousand dollars (\$500,000) in cases resulting in the death or prolonged coma of the plaintiff, against all health care practitioners who are defendants, and shall not exceed a total of two hundred fifty thousand dollars (\$250,000) or five hundred thousand dollars (\$500,000) in cases resulting in the death or prolonged coma of the plaintiff, against all health care facilities that are defendants. The aggregate amount of damages recovered by a plaintiff for noneconomic losses in a health care liability action shall not exceed five hundred thousand dollars (\$500,000), or one million dollars (\$1,000,000), in cases resulting in the death or prolonged coma of the plaintiff. The limitations of this subsection shall apply in the aggregate to all claims arising from

the same injury, regardless of the number of claims, claimants, plaintiffs, or beneficiaries.

(c) Damages for noneconomic losses shall include, but not be limited to, damages for physical and emotional pain and suffering, inconvenience, discomfort, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, injury to reputation, punitive damages, and all other nonpecuniary losses of any kind or nature. Damages for noneconomic losses shall not include past or future:

- (1) Medical expenses to the extent that they are otherwise recoverable, including rehabilitation and therapy;
- (2) Lost past or future wages or earnings capacity;
- (3) Other loss of income;
- (4) Funeral and burial expenses;
- (5) The economic value of services performed by the injured party but for the injury or death, including the cost of providing those domestic and other necessary services performed by the injured party without compensation; or
- (6) Other similar actual monetary losses.